

The Honorable Ronald B. Leighton

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STORMANS, INCORPORATED doing
business as RALPH'S THRIFTWAY, et al.,

Plaintiffs,

v.

MARY SELECKY, Secretary of the
Washington State Department of Health, et
al.,

Defendants.

Case No. C07-5374-RBL

[PROPOSED] STIPULATION AND
ORDER GRANTING DEFENDANTS'
AND DEFENDANT-INTERVENORS'
JOINT MOTION FOR STAY OF
PROCEEDINGS PENDING DECISION BY
THE NINTH CIRCUIT COURT OF
APPEALS

This matter having come before the Court on Defendants' and Defendant-Intervenors' joint Motion for Stay of Proceedings Pending Decision by the Ninth Circuit Court of Appeals, and the Court having reviewed the papers filed by the parties, the record in this action, and any other pleadings and argument of the parties relevant to the issues raised therein, and the Court having asked the parties as a condition to entering the stay to reach an agreement on certain limitations in the event the Ninth Circuit Court of Appeals reverses the Order Granting Preliminary Injunction and vacates the preliminary injunction, and the parties having reached such an agreement as set forth below:

[PROPOSED] STIPULATION AND ORDER
GRANTING DEFENDANTS' AND
DEFENDANT-INTERVENORS' JOINT
MOTION FOR STAY OF PROCEEDINGS
PENDING DECISION BY THE NINTH
CIRCUIT COURT OF APPEALS - 6

*110767 (13438.00)

ELLIS, LI & MCKINSTRY PLLC
Attorneys at Law
Two Union Square
601 Street Suite 4900
Seattle, WA 98101-3906
206•682•0565 Fax: 206•625•1052

1 IT IS HEREBY ORDERED THAT Defendants' and Defendant-Intervenors' Motion
 2 for Stay is GRANTED. All currently pending trial and pre-trial dates and Case Schedule
 3 deadlines, including the deadline for submission of dispositive motions, are vacated, but only
 4 to the extent not already passed and except as to pending discovery issues and any discovery
 5 that the Court may order. Within ten days after the Ninth Circuit issues its mandate in this
 6 case, the Court will hold a status conference to re-set the trial and other pre-trial dates,
 7 including the deadline for submission of dispositive motions.

8 IT IS HEREBY FURTHER ORDERED THAT in the event the Ninth Circuit Court of
 9 Appeals reverses the Order Granting Preliminary Injunction and vacates the preliminary
 10 injunction, the Defendants stipulate that the State Defendants will not take investigative or
 11 enforcement action against Plaintiffs or their employers under WAC 246-863-095(4)(d) or
 12 WAC 246-869-010(4)(d) until a trial on the merits has concluded.

13 IT IS HEREBY FURTHER ORDERED THAT in the event the Ninth Circuit Court of
 14 Appeals reverses the Order Granting Preliminary Injunction and vacates the preliminary
 15 injunction, the Defendants stipulate and agree that the State Defendants will notify the Court
 16 if a complaint is received, and that the State Defendants intend to investigate, alleging a
 17 failure of a non-party licensed pharmacy to timely deliver Plan B in violation of WAC 246-
 18 869-010, or that any non-party licensed pharmacy or pharmacist has not complied with WAC
 19 246-869-010 (4)(d) or 246-863-095 (4)(d), and the Court will conduct a telephone conference
 20 to decide what steps, if any, may be taken by the State Defendants with respect to
 21 investigating the complaint, and this will occur with each and every such complaint regarding
 22

23 [PROPOSED] STIPULATION AND ORDER
 GRANTING DEFENDANTS' AND
 DEFENDANT-INTERVENORS' JOINT
 MOTION FOR STAY OF PROCEEDINGS
 PENDING DECISION BY THE NINTH
 CIRCUIT COURT OF APPEALS - 6

*110767 (13438.00)

ELLIS, LI & MCKINSTRY PLLC
 Attorneys at Law
 Two Union Square
 601 Street Suite 4900
 Seattle, WA 98101-3906
 206•682•0565 Fax: 206•625•1052

1 non-parties until otherwise ordered by the Court or until after a trial on the merits has
2 concluded.

3 Dated this _____ day of March, 2009.

4
5 _____
6 RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE

7 AGREED TO BY:

8
9 **ELLIS, LI & McKINSTRY PLLC**

10 By: s/ Kristen K. Waggoner
Kristen K. Waggoner, WSBA #27790
Steven T. O'Ban, WSBA #17265
11 Ellis, Li & McKinstry PLLC
601 Union Street, Suite 4900
Seattle, WA 98101
12 Tel: (206) 682-0565
Fax: (206) 625-1052
13 E-mail: kwaggoner@elmlaw.com
E-mail: soban@elmlaw.com
14 Attorneys for Plaintiffs

15
16 **ORRICK, HERRINGTON & SUTCLIFFE LLP**

17 By: s/ Paul F. Rugani
Paul F. Rugani (WSBA # 38664)
18 **ORRICK, HERRINGTON & SUTCLIFFE LLP**
719 Second Avenue, Suite 1000
Seattle, WA 98104
19 Tel: (206) 839-4300
Fax: (206) 839-4301
20 E-mail: prugani@orrick.com
Attorneys for Defendant-Intervenors

21
22
23 [PROPOSED] STIPULATION AND ORDER
GRANTING DEFENDANTS' AND
DEFENDANT-INTERVENORS' JOINT
MOTION FOR STAY OF PROCEEDINGS
PENDING DECISION BY THE NINTH
CIRCUIT COURT OF APPEALS - 6

*110767 (13438.00)

ELLIS, LI & McKINSTRY PLLC
Attorneys at Law
Two Union Square
601 Street Suite 4900
Seattle, WA 98101-3906
206•682•0565 Fax: 206•625•1052

NORTHWEST WOMEN'S LAW CENTER

By: s/ Sara Ainsworth

Sara Ainsworth (WSBA # 26659)

Lisa M. Stone (WSBA # 15421)

Rima J. Alaily (WSBA # 29225)

NORTHWEST WOMEN'S LAW CENTER

907 Pine Street, Suite 500

Seattle, WA 98101-1818

Tel: (206) 682-9552

Fax: (206) 682-9556

E-mail: sains@nwwlc.org

E-mail: lstone@nwwlc.org

E-mail: rima.alaily@gmail.com

Attorneys for Defendant-Intervenors

PLANNED PARENTHOOD OF WESTERN WASHINGTON

By: s/ Laura Einstein

Laura Einstein (WSBA # 39829)

PLANNED PARENTHOOD OF WESTERN WASHINGTON

2001 East Madison Street

Seattle, WA 98122-2959

Tel: (206) 328-7734

Fax: (206) 720-4657

E-mail: laura.einstein@ppgnw.org

Attorneys for Defendant-Intervenors.

**WASHINGTON BOARD OF PHARMACY
WASHINGTON DEPARTMENT OF HEALTH**

s/ Joyce A. Roper

Joyce A. Roper, (WSBA# 11322)

Alan D. Copsey, (WSBA# 23305)

Rene Tomisser, (WSBA# 17509)

Washington State Attorney General

Agriculture & Health Division

7141 Cleanwater Drive SW

Olympia, WA 98504-0109

Tel: (360) 664-4968

Fax: (360) 586-3564

E-mail: joycer@atg.wa.gov

E-mail: alanc@atg.wa.gov

E-mail: renet@atg.wa.gov

Attorneys for Defendants Department of
Health and Board of Pharmacy

[PROPOSED] STIPULATION AND ORDER
GRANTING DEFENDANTS' AND
DEFENDANT-INTERVENORS' JOINT
MOTION FOR STAY OF PROCEEDINGS
PENDING DECISION BY THE NINTH
CIRCUIT COURT OF APPEALS - 6

*110767 (13438.00)

ELLIS, LI & MCKINSTRY PLLC
Attorneys at Law
Two Union Square
601 Street Suite 4900
Seattle, WA 98101-3906
206•682•0565 Fax: 206•625•1052

WASHINGTON HUMAN RIGHTS COMMISSION

s/ Mickey B. Newberry

Mickey B. Newberry, (WSBA# 15635)

Heather L. Polz, (WSBA# 30502)

Washington State Attorney General

Government Compliance and Enforcement

Division

1125 Washington Street SE

Olympia, WA 98504-0100

Tel: (360) 753-6200

E-mail: mbn@atg.wa.gov

E-mail: heatherp1@atg.wa.gov

Attorneys for Defendant Washington Human Rights Commission

[PROPOSED] STIPULATION AND ORDER
GRANTING DEFENDANTS' AND
DEFENDANT-INTERVENORS' JOINT
MOTION FOR STAY OF PROCEEDINGS
PENDING DECISION BY THE NINTH
CIRCUIT COURT OF APPEALS - 6

*110767 (13438.00)

ELLIS, LI & MCKINSTRY PLLC
Attorneys at Law
Two Union Square
601 Street Suite 4900
Seattle, WA 98101-3906
206•682•0565 Fax: 206•625•1052

CERTIFICATE OF SERVICE

I hereby certify that on March 5, 2009, I electronically filed the following document with the Clerk of the court using the CM/ECF system which will send notification of the filing to all counsel of record:

[Proposed] Stipulation And Order Granting Defendants' And Defendant-Intervenors' Joint Motion For Stay Of Proceedings Pending Decision By The Ninth Circuit Court Of Appeals.

DATED this 5th day of March, 2009.

ELLIS, LI & McKINSTRY PLLC

By: s/ Kristen K. Waggoner
Kristen K. Waggoner, WSBA #27790
Steven T. O'Ban, WSBA #17265
Ellis, Li & McKinstry PLLC
601 Union Street, Suite 4900
Seattle, WA 98101
Tel: (206) 682-0565
Fax: (206) 625-1052
E-mail: kwaggoner@elmlaw.com
E-mail: soban@elmlaw.com

[PROPOSED] STIPULATION AND ORDER
GRANTING DEFENDANTS' AND
DEFENDANT-INTERVENORS' JOINT
MOTION FOR STAY OF PROCEEDINGS
PENDING DECISION BY THE NINTH
CIRCUIT COURT OF APPEALS - 6

*110767 (13438.00)

ELLIS, LI & McKINSTRY PLLC
Attorneys at Law
Two Union Square
601 Street Suite 4900
Seattle, WA 98101-3906
206•682•0565 Fax: 206•625•1052